RESPONSIBILITY

AND

DISEASE:

An Essay.

BY

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"Every stupid man, every cowardly man, and every foolish man, is but a less palpable madman."—CARLYLE.

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PREFACE.

THE following Essay upon "Responsibility and Disease" was first published in *The Law Magazine and Review* for July 1872. Since that time it has been reprinted in its entirety in an American Legal Journal, and has met with some favour in the eyes of Members of the Medical Profession.

These circumstances, and the kind advice of some whose opinion I value much, have induced me to add a few remarks to the Essay as it was first published, which was before I had an opportunity of reading DR. RUSSELL REYNOLDS'S paper "On the Scientific Value of the Legal Tests of Insanity," and to offer it a second time to the public.

5 ESSEX COURT, TEMPLE,
November, 1872.

RESPONSIBILITY AND DISEASE.

THE question as to what ought to be the test of insanity in courts of law is of sufficient importance to require a definite answer, and owing to the prominence which has been given to it in connection with certain recent cases, is of sufficient interest to insure its consideration by a great many persons who do not belong either to the medical or legal profession. There seems to be little doubt that, owing to the more thorough training which is bestowed upon members of the medical profession, and owing also to the better scientific methods which have been so largely made use of in our days, a great many persons who were formerly regarded as sane have come to be looked upon as mad; so much so, that there are those who hold that the increase of insanity, which has been so persistently asserted in recent times, is in reality only an apparent increase, and that the greater number of known lunatics is

to be accounted for rather by an emphasis on the words "number" and "known," than on the words "number" and "lunatics." This fact, then, may to some extent account for the greater frequency with which the plea of insanity is advanced in relation to judicial inquiries, it being certain that many persons are now recognised as insane who would formerly have been regarded as in a state of perfect mental health. Some people have thought that that fact alone was a sufficient ground for a condemnation of the existing test of insanity, which is, to all intents and purposes, the same which existed before those advances which have raised medical psychology from a body of empirical opinions into a science had been achieved. They hold, with some show of reason, that law must conform itself to scientific truths. The will of man against the will of Nature is like an empty scale, on a hair balance against a loaded one. Absolute facts have a grim way of stultifying arbitrary laws, and only time is required to enable true science to assimilate all laws to its rules. There is plausibility in these arguments, but they require to be anatomized before we can say whether they are true or false.

Upon these and other grounds, then, which we shall examine hereafter, medical men have insisted upon a change in the law in respect to insanity,

and at the present time a committee, consisting of medical men and lawyers, is being formed, with a view to the amendment of the law in so far as the tests of insanity are concerned. The time is not inopportune. The public has a right to have the case for and against amendment laid before it, and the public is, I am convinced, capable of arriving at as satisfactory a conclusion with reference to this matter as any medical man or lawyer, or as any committee consisting of members of these two learned professions. Medical men, then, assert that insanity is a disease, and a disease of body; and lawyers, as far as I know, are not inclined to deny this assertion. If you assured a lawyer that the intention to enter into a contract was due to certain molecular changes in the grey matter of the brain, it would not affect his theory that the essence of a contract is consent. He has nothing to do with thought as thought, or with the physical basis of thought; he concerns himself only with thought when it becomes act. His province is not mind: that he leaves to the psychologist. His province is not body: that he leaves to the physiologist or physician. But his province is conduct. Now, just as the etiology of consent does not matter to him in relation to the law of contracts, so to some extent the fact that insanity is a disease is of as little importance to him in relation to

medical jurisprudence. This shall be considered at greater length subsequently. At the present time, I am anxious to place the position of medical men in relation to this question clearly before my readers.

Medical men seem to be under the impression that the object of the law, in all cases in which the question of sanity or insanity is in the cognizance of a court of justice, is to discover whether insanity *really exists or not*, and that impression is erroneous. The object of the law in all such cases is,—first, to discover whether insanity can be *proved to exist;* and secondly, to discover whether insanity, when proved to exist, is of such a nature as will exempt the individual from the consequences of a criminal act.

The second of these questions is to be answered with reference to that rule of law, or legal test, the satisfactoriness of which we propose to consider; but as a preliminary to that it may be well to examine the error into which large numbers of persons have fallen with regard to the object of all legal processes, and to point out one or two of the consequences of this error. First, then, medical men think that the object of a judicial inquiry, in which sanity is in question, is to discover whether insanity exists or not, the real object being to discover whether insanity can be proved to exist.

Injustice is a necessity of justice. True, omni-

science or omnipotence might, if it wished, do absolute justice; but ordinary human tribunals must be content to do some things unjustly that many may be done justly. Friction is what retards a wheel, and yet without it there could be no motion, no expedition. So injustice is what mars our best efforts to do right, and yet without it no justice could be done. I am not looking at it in the large sense. True, the one exists *from* the other, *in* the other, and *through* the other. True, the one is the essential *other* of the other; but even looked at in a peddling governmental way, the existence of the one implies the existence of the other. All government is founded on a maxim which has this thought in it: that to get liberty we must give up liberty. So, it is true, to get justice we must suffer injustice. "It is only with renunciation that life, properly speaking, can be said to begin." It may seem very horrible at first sight to allege that the object of all our legal tribunals is the discovery, not of truth, but of *proved truth*, which must in some way differ from one another or the distinction would be unnecessary; but the inevitability will reconcile people to the notion in time. Experience of impossibilities is a great mean—nay, the only mean—of discovering how to make use of opportunities. That this is inevitable is certain. Thus, suppose that a man, who is innocent, is accused of

a crime, and that, owing to his likeness to the real perpetrator, he is positively sworn to by several individuals who saw the crime committed. This man may, although perfectly innocent, be unable to prove an *alibi*, or to establish the fact of his innocence by any witnesses. Now, I ask how, under such circumstances, is a court of justice to arrive at a conclusion as to the true state of the case? He asserts his innocence as every other prisoner, guilty or innocent, does; he produces no witnesses; and three or four persons, who have no possible reason for speaking untruthfully, swear that they saw him commit the crime of which he is accused. Under such circumstances *it would be right that the innocent man should be punished.* If there were no rules as to evidence, there could be no law; and if there were no law, life would be insecure, and property, upon which life depends so much, would be worthless from the insecurity of its possession. Because one medical man makes a mistake and kills a patient, is the science of medicine worthless? Because law can only do partial justice, are we to have no law and no justice?

Such cases as that stated above have occurred. Innocent men have been, and are being punished for crimes they did not commit; but under any law in the world that must be the case; and to avoid such dire mistakes you would require, in the first

instance, to make human nature perfect before you could get a perfect law; and if you succeeded in perfecting human nature, law would no longer be necessary. That was the case of a sane man; take the case of an insane person. Insanity is a bodily disease; and in one way it may be said that it does not begin at all. What we call predisposing causes might really be more scientifically called latent insanity. The disease existed in our grandfather, but it is latent in us until some exciting cause; for instance, a blow on the head, over-fatigue, or mental distress—makes it actual. As every body has latent heat, so every organism has latent insanity. But even where insanity manifests itself by external signs, it is often exceedingly difficult to detect. There are what physicians call premonitory symptoms, but no physician can say where sanity ends and insanity begins. At one time they may say "the man is sane," and at another "the man is insane," but it is impossible for anyone to say when health ceased and disease commenced. When does the dawn begin? When does twilight end? Does summer really commence on the first of May? Is not health just a state of comparative freedom from disease? All nature's works are tricks of legerdemain. Now, as that is the case, it is evident that we all must make mistakes, and so long as there is a necessity for

punishment at all, insane persons will inevitably be punished. What else is possible if medical men cannot say when insanity commences? and even if they could give evidence on this point, many insane persons must, without doubt, suffer punishment, simply because all of us play a game of chance, and the dice are often loaded. Suppose a person is accused of a crime, and that no medical man sees the prisoner, or that the medical men who do see him make a mal-diagnosis—which is evidently possible—and pronounce the man sane when he is insane. Suppose that there is nothing in his past life, or in the nature of the act, to suggest the existence of insanity, and that the plea is never pleaded, although the man is actually insane, under such circumstances, just as in the case of the sane man above alluded to, the prisoner will be rightly convicted and justly punished, simply because he has not been proved to be mad. Can anything be clearer than that such casualties are inevitable? As long as we have government by force such accidents will happen, and we must in a mournful way congratulate ourselves upon their occurrence, as we are persuaded that they are the necessary incidents of good government, and the fair administration of the law. "The restraints upon men as well as their liberties are to be considered their rights," says Burke; and the sacrifice

of some persons who are perfectly innocent is not to be regarded as such an unmitigated evil, as Counsel, who eloquently assert that it is better a hundred guilty persons should escape than that one innocent person should be punished, would have us believe. That may be as they say; but the counsel who make such statements are generally for the defence. But if it were true it would not affect the argument. If law sacrifices a few innocents, what does Nature do? Does she not sacrifice all living things, good and evil, just and unjust, in her own good time, for the benefit of the race? We scarcely think Nature barbarous! Consequently, the proposition that judicial inquiries in such cases are for the purpose of discovering who are proved insane may be regarded as true, and the impression that the objects of courts of law in such cases is the discovery of the existence of insanity may be looked upon as erroneous.

I am now in a position to consider the second question which I proposed, and that is the legal test of insanity. For the purposes of law the insane must be distinguished from the sane. It may be true that sanity passes into insanity, and insanity into sanity, as gradually as night passes into day, or day into night. Yet, just as there is a necessity for distinguishing day from night, so is there a necessity to distinguish sanity from in-

sanity. It is not proposed to treat all sane men who commit crimes in the way that we treat insane men acting in the same way, nor is it proposed to treat insane criminals as we at present treat sane criminals. We are not going to make our gaols asylums, nor our asylums gaols. Hence the necessity that there is for distinguishing between those who are mentally sane and those who are mentally insane.

Stupidity passes into intelligence by as imperceptible degrees as those which constitute the progress of health to disease. Men grow in stature with God slowly. A man is not a fool to-day and a sage to-morrow. The growth of intelligence is as gradual as the growth of the body ; and as the management of property and affairs pre-supposes the possession of intelligence, the law, to protect men from themselves, found it expedient to say, that unless a man had intelligence he should not have complete power over his property, and it consequently became necessary to draw a line between childhood and manhood, and the law did so, saying a man shall come of age when he is twenty-one years old. The scientific value of this test of intelligence is evidently very small. It cannot be said that a man is really able to enter into an intelligent bargain to-day which he would have been unable to enter into yesterday. Besides,

some men have more intelligence at seventeen than others have at forty-five. The absolute necessity for some such rule, however, and the impossibility of devising one more in harmony with the facts of human development, are sufficient reasons for the existence of this rough test of mental power.

Now, although it is asserted with truth that any definition of insanity is almost an impossibility, those persons who make such an assertion must be prepared, when they ask a court of law to pronounce upon the sanity or insanity of an individual, to expect that it should have some means of finding out what insanity is, and some proof of its existence. I believe that some persons are in the habit of asserting that it is at this point that the law becomes irrational. Those persons argue that it is impossible to draw a line between sanity and insanity, and that consequently, any test of insanity, as it is not founded upon Nature, must be absurd. They would desire that every case should be tried on its own merits, and, as far as I can understand their argument, that the question as to the sanity or insanity of an individual should be left to a jury, upon the unsupported opinion of medical witnesses, who are able to recognise, but not to define insanity. A trial in which insanity was pleaded would, in that case, be conducted by the examination of medical witnesses on both sides

and the judge would leave the jury to decide upon the question of sane or insane, without telling them any test of insanity, but simply instructing them to make up their minds as to which of the medical men were most trustworthy, and to give their verdict on the ground of the reliability of the witnesses. Their reliability, again, would have to be judged of from the way in which they gave their evidence, and not from the internal worth or worthlessness of what was said. This method would, it is argued, have many advantages. It is a most difficult thing to make scientific evidence intelligible to an unscientific mind. It is almost impossible by means of question and answer to bring out all the symptoms which indicate the presence of insanity, and to show the significance which consists only in the relation of these symptoms. To a person who does not know the science of mind, the inferences that physicians draw from symptoms and facts would not seem to be legitimate, and consequently the evidence of an expert is held worthless just when it ought to have the greatest weight. If they were only asked to say whether they thought the person sane or insane it would be much better. I believe these medical gentlemen who argue thus have some objections to cross-examination, and are convinced that some such system as that I have sketched above would be infinitely better than the

present legal process. It might be said with some show of reason that, in the case of a man coming of age, there should be no fixed rule, but that each case should be decided on its own merits, and on the proved mental capacity of the youth, and that this capacity should be proved by the expression of opinion upon the part of his friends and enemies. I have never heard this argued, but it seems to me as reasonable as the proposed amendment with reference to the abolition of the test of insanity. If anyone thinks that better results, (and it is by results that laws must be judged,) would follow from such a course than those which are attained under the present system, I can only say that I differ from him. If anyone imagines that more substantial justice would be done under such a system than under that which adopts a definite test of insanity, I can only say that he is profoundly ignorant of the science of evidence, however well he may be versed in the science of medical psychology. The theory of the law, and it is a theory for which a good deal can be said, is that a witness is summoned into a court of law to speak concerning facts, and not to give opinions, and even where witnesses are asked to give opinions, they are at the same time asked to state the facts upon which these opinions are founded, so that the jury may test the worth of their inferences. We have in recent

times become enamoured of evidence and disgusted with authority. We have come to respect facts and despise opinion, and we have come to these conclusions with reference to the relative value of the liquor of facts and the froth of opinion which foams upon it, for very sufficient reasons. It is true that a man's personality is sometimes an argument. If we know that personality well, it might bulk largely as a fact in many reasonings. Some great men have, in virtue of their personalities, been mind-compellers. True genius is the essence of facts. But experience has taught mankind that the difficulty of an accurate estimate of the worth of a man's personality is exceedingly great. It has taught us that the counterfeit of worth is so easy, that we have come to the conclusion that in most cases authority when it looks best is most worthless, and that it is well to rely only upon facts: those

> Chields that winna ding,
> And canna be disputed.

Under these circumstances it is somewhat extraordinary to find medical men, whose whole science has to do with facts, demanding a judicial recognition of opinions. The thing is not only strange, it is ridiculous. How can a jury be said to arrive at any conclusion with reference to sanity or insanity, when they are asked to decide between the

stupid notions of rival practitioners, whose diversity of opinion has become proverbial? The thing is simply grotesque. Yet, however worthless an argument may be, it is always worth refuting. There are some persons who seem to have a sort of heart in their heads which leads them to sympathise with weak arguments. For their sake, those impostors of the world of thought, fallacies, ought to be exposed.

The ground of this argument is, that it is impossible to draw any line of demarcation between sanity and insanity; and while I admit the difficulty, I cannot see that the argument in any way supports the theory. Is it easier to draw a line of demarcation between guilt and innocence? That, too, like sanity and insanity, is a work of Nature. Guilt passes by imperceptible gradations into innocence, as insanity does into sanity. No one can mark the boundary; but is that a reason for asserting that no legal distinction between these ought to be made? Is it a reason for asserting that every case ought to be decided on its own merits, and upon the evidence of philosophers who have made the human mind their constant study, and who should be asked their opinion as to the guilt or innocence of the accused. Are we to be told that upon such evidence a jury would, after coming to a conclusion as to the trustworthiness of the experts, arrive at

a satisfactory conclusion as to the guilt or innocence of the accused? Is it asserted that such a verdict would be satisfactory to law, or in conformity with science? Yet the determination of the questions connected with moral turpitude is quite as difficult as the determination of those which are connected with, so-called, moral insanity. The degrees of criminality are infinite—so much so, that it would only be truth to assert, that no two men who received the same sentence for what appeared to be exactly similar crimes were ever equally guilty. Search all time, and you will not find one offence which was exactly similar in its moral aspects to any other. Are these arguments for such a system as that I have indicated? But the argument may be carried one step farther. Are not truth and falsehood in the same relation as guilt and innocence? Are there not white lies and black lies, and a hundred shades of grey lies? Is there not a science of casuistry? Can anyone say where truth ends or falsehood begins? True, many people know a downright lie when they see it, just as many people have no doubt about the presence of mania from the wild broken conduct of a man. But can we draw a line between truth and error? These depend upon Nature as much as sanity and insanity, and are, or may be, as much dependent upon organism as mental health or

mental disease. Truth is like white light: it is made up of many colours, and the media of minds it passes through tincture its rays. Well, if no line can be drawn, should law draw a line, and should such a difficult question as the trustworthiness of philosophers or physicians be left to the decision of a jury? Certainly not! Therefore, if the question of trustworthiness cannot safely be left to a jury, there would be nothing upon which they could decide in the proposed investigation of the opinions of medical men or philosophers. If we withdraw one of these questions, sanity or insanity, guilt or innocence, truth or falsehood, from a jury, we must withdraw all. They are precisely analogous. If we withdraw all there is nothing left for a jury to do, and the proposed tribunal has ceased to exist. Some people may go so far as to assert that if it did there would be no great loss; but it is to be remembered that this *reductio ad absurdum* has been proved only with reference to a Court which was to decide upon opinions, and which was formed with that view because of the impossibility of definition. That a trial of criminals is a necessity few will deny, and that all questions of guilt and innocence could be left to an experienced medical assessor for decision, not many will be found to assert.

Guilt and innocence, then, cannot be clearly dis-

tinguished. Even when we have satisfactory proof of the commission of a crime, or of what we call a crime, we cannot be certain that there is any moral turpitude connected with the act. "There is no crime," says Jacobi, "but has sometimes been a virtue." This requires no consideration. The fact is palpable; and yet although that is so, it is not argued that there should be no criminal law; it is not argued that there should be no punishments; it is not argued that the present confessedly rough method of judging of guilt or innocence is unsatisfactory. Even those physicians who argue that there is no distinction in Nature between crime and insanity, and who blame organism for all errors, do not assert that there should be no such thing as Government. The Police is an institution which is still regarded as necessary. That being so, why should any different method of procedure be adopted, in relation to the insane, than that which is adopted in relation to the sane? The State exists for the sake of healthy men, and not for the sake of those who are diseased; and yet some advocates would have us believe that it is above all things important to protect those who are mad, instead of endeavouring to secure the greatest amount of happiness to those who are sane. Those persons only misunderstand the fundamental principles of the constitution of society. If, then, we

are to have a test of guilt, why should we not have a test of insanity? Not because the latter is a disease, because the former is, according to many, a disease likewise. If it is argued that insanity depends almost entirely for its recognition upon medical experience, it is at the same time emphatically denied by those who have had no little experience of mental disease, the present Chairman of the Commissioners in Lunacy maintaining "that persons of common sense, conversant with the world, and having a practical knowledge of mankind, if brought into the presence of a lunatic, would in a short time find out whether he was or was not capable of managing his own affairs." But even if it was granted that we must depend upon physicians for the recognition of insanity, it is surely certain that medical experience is like all other experience, an experience of facts, and that facts are capable of expression by words and of appreciation, after due explanation, by common sense.

The questions which come before a court of law in cases where insanity is not mentioned, are sometimes quite as complicated as any case which involves a question of mental disease. Questions of intention or of patent law are much more abstruse to an ordinary jury than questions of conduct. Yet in all these cases juries are thought competent

enough. Take, for instance, a case of poisoning. A common jury know nothing about toxicology. They are not acquainted with the complicated phenomena of death; they do not know anything about symptoms, poisonous doses, and *post-mortem* appearances, and yet, if they have these things stated in evidence, if they hear the symptoms enumerated, and the *post-mortem* appearances described, and the other parts of the case laid before them, they can come to a satisfactory conclusion as to the difficult question as to the cause of death, and the guilt or innocence of the accused, and they do this by means of a legal test. Why should that not be possible in the case of insanity? Only one reason can be suggested why it has not been practised with as satisfactory results, and that is the strange incompetence of medical psychological witnesses, for the most part, who have occupied themselves far more in declaiming about the unsatisfactory state of a law they did not understand, than in becoming acquainted with a disease which they pretended to treat.

So far what I have said only goes the length of proving that there must be a legal test of insanity, and I have not yet dealt with the question as to whether the present test of insanity is satisfactory or not. It is one thing to prove the necessary existence of some law, and another to prove the

excellence of the existing rule. We have seen, then, that law cannot be made conformable to accurate science; that uniformity in rule is an advantage which must not be sacrificed to a pseudo exactitude of justice; and that it is better that those youths who are capable of managing their own affairs at the age of seventeen, should wait a few years before they enjoy the whole control of their property, than that there should be no definite rule with regard to minority and majority. But although that is indisputable, there must be some means of discovering whether the existing rule, say as to minority and majority, is a good or a bad one. If it was agreed on all hands that every man was able to make a good use of his property at the age of seventeen; if it was admitted that the great mass of mankind came to their prime at that age, and that they were no more likely to be under the influence of others, or be affected with boyish rashness at that age than at thirty, then, unquestionably, the rule, as it at present exists, would be a bad one. The rule is founded, not upon a scientific estimate of the development of mind, but upon a common-sense experience; and it is because that common-sense experience is in conformity with palpable facts, that it is adopted by law and approved of by mankind. This indicates, then, that the rules of law are to be judged

of, as to their excellence, by a reference to facts, and that these facts must not be occult and discoverable only by the microscopes of science, but must be visible to the unassisted eyes of ordinary men. By this criterion, then, we must estimate the worth of the existing test of insanity.

Dr. Russell Reynolds, in a paper upon "The Scientific Value of the Legal Tests of Insanity," read before the Metropolitan Counties' Branch of the British Medical Association, has considered the whole question at some length. The paper is elucidative of the best medical thought upon the subject. The conclusions at which Dr. Reynolds arrives would be endorsed by a large number of the members of the profession to which he belongs, and so far as they have not been already answered above, may be considered in this place. Dr. Reynolds' conclusions are:—"1. That the general notion of the value of delusion (as a criterion of the presence of insanity) is unsatisfactory, because delusion may be absent, and because, when present, its value varies from extreme to extreme. 2. That the test of the knowledge of right and wrong, and of the consequences of actions is again untrustworthy, because it may exist in the lunatic, and exist in an exaggerated degree, and because its application to particular acts is of character varying in the insane as it does in the sane. 3. That the doctrine with

regard to partial insanity is untenable, because there is no such thing as a sound and unsound mind co-existing in the same individual, and because it is impossible to determine the limits of disturbance which may be occasioned by what we term a localized or partial ailment." Dr. Reynolds then goes on to suggest the points which the committee, (the existence of which he was advocating) should, in the event of its formation, consider.

We may speak of these three objections in their order. 1. Dr. Reynolds has recourse for what he calls his test of insanity generally to Mr. Shelford's work which was published in 1847.* Several works have been published since that time, and while in all these insanity, in so far as criminal responsibility is concerned, is said to rest upon the answers given by the Judges to the House of Lords after the trial of M'Naghten ; and in so far as civil capacity is concerned, upon certain recent cases which have come before our courts of law, still Dr. Reynolds has recourse to the dicta given in Mr. Shelford's work, and devotes a large portion of his paper to the proof of the unsatisfactoriness of a test which has been abandoned. Dr. Reynolds was not ignorant of the answers of the judges which he quotes in the early portion of the second part of

* "Practical Treatise of the Law concerning Lunatics, Idiots, and Persons of Unsound Mind." 2nd Edition. 1847.

his essay (*British Medical Journal*, June 29, 1872, p. 689). The first of these answers declares that delusion is not the general test of insanity. It is "Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land."

Neither was Dr. Reynolds in ignorance of the recent cases to which I have alluded, as he quotes some sentences from the judgment of Chief Justice Cockburn, in *Banks* v. *Goodfellow*,* one of which runs as follows:—"We are of opinion that a jury should be told that the existence of a delusion compatible with the retention of the general powers of the faculties of the mind, will not be sufficient to overthrow the will, unless it was calculated to influence the testator in making it." Now it may be argued with some plausibility that

* 5 L. R., Q. B. 549.

in both of these authoritative utterances there is a tacit assumption that while delusion is not to be the test of capacity or responsibility, still it is to be regarded as the test of insanity, as Dr. Reynolds has said. But as law has only two objects in discovering the existence or non-existence of insanity, viz., with a view either to determine the capacity of the individual to perform civil acts, or the responsibility of the individual for criminal transgressions, it is evident that the plausibility of this argument is only plausibility after all. Law has no interest in discovering the existence of insanity apart from the question of conduct. It may be true that there is no sudden transformation scene, no leap from the hill of health into the valley of disease, and that those who would hope to see sanity pass into insanity are as foolish as those who hope to see the flowers grow. But such facts have no more interest for the lawyer than a demonstration that all thought depends on the thickness of the cortical substance of the brain on the one hand, or of the truth of the Berkleyan hypothesis on the other. Law is not a speculative but a practical science. What it sets itself to do is to find out whether an individual is capable or responsible, and the existence or non-existence of insanity may or may not bear upon the true answer to that question. It does not set itself to inquire

into the absence or presence of delusion, and from that absence or presence infer capacity or incapacity, responsibility, or irresponsibility. It maintains that men may be under the influence of a delusion, and yet be, to all intents and purposes, sane. It holds that men like Pascal or Swedenborg, Ben Jonson, or Gœthe, might suffer from illusions of the senses, and yet be capable of performing all their functions of citizenship, and be responsible for all contraventions of morals or statute law. The law then has no definition of insanity, except in so far as insanity exempts the individual afflicted with it from punishment, or deprives the individual labouring under it of his rights as a citizen. Dr. Reynolds himself deplores (*British Medical Journal*, June 29, 1872, p. 690) the non-recognition in courts of law of a distinction which, to him seems obvious, between the "condition of the moral sense itself and the faculty for its correct and special applications to special acts." I have in another place considered this question more fully, but it seems to me that Dr. Reynolds has himself failed to appreciate an exactly similar distinction between the functions of science and the functions of government. As there is a speculative conscience and an active conscience, as there is a power which thinks and knows, and as that power need not always necessarily pass over into that which does or acts,

so are the functions of science and law differentiated. Much may exist in conscience which does not pass into act, and so much may exist in science, which is the interpreter of Nature, which cannot pass into law. Even equity refuses to compel the performance of one-sided promises, although in conscience they may be more binding than those which are made for a valuable consideration. Even equity leaves many duties to be enforced *in foro conscientia*, and so law must, upon exactly similar grounds, be content to leave much that science may dictate unenforced by penalties, and many of the definitions which science may propound unconfirmed by legislative enactment. The test of "insanity generally," then, is not delusion, as Dr. Reynolds seems to think, and all the arguments used in the first part of his work are futile as used under a mistaken belief, and although exception might be taken to many of them if they were examined *seriatim*, yet, as they are all used with a view of proving the unsatisfactory nature of delusion as a test of insanity, it will not be necessary to say more about them in this place. Still, one or two points are scarcely adequately dealt with. For the sake of accuracy, they require re-statement. Dr. Reynolds, when considering the unsatisfactoriness of delusion as a test for the existence of insanity, states a case of melancholia, and infers that because

there was no delusion present in the melancholic when he committed suicide he would, had the law had its will, have been condemned to a "felon's grave," but adds that the "common sense which is sometimes found in a coroner's court, which over-rides legal definitions, and "common humanity, which deals tenderly with all those whose troubles have driven them to take refuge somewhere beyond the reach of our assistance, solace, praise, or blame," brought in a verdict of "temporary insanity," which was, in the imaginary case stated, more in conformity with the views of the physician, and the established truths of science. But there is a slight economy of truth here. In the case of suicide almost every verdict returned by a coroner's jury—whether it is dictated by common sense or common humanity—is temporary insanity. To quote such a case, therefore, as a proof of the discrimination of a coroner's jury, of the common sense of a jury which over-rides legal definition, is hardly fair, especially when Dr. Reynolds naively adds that sentence about common humanity, and dealing tenderly, with those whose troubles have made them seek refuge in death. Is it not evident that it was the common humanity of the jury that made them return the verdict of "temporary insanity," because they felt that it was useless to punish the lifeless corpse of a man when such

punishment had, owing to the advancement of a certain class of ideas, and the decadence of certain spiritual conceptions, lost its deterrent effects upon mankind? Was it not this—their common humanity—that dictated their verdict rather than any common sense appreciation of the faultiness of the legal definition of insanity? If a jury found a prisoner "not guilty" on the ground that they disapproved of punishment by death, that verdict could not, with any fairness, be quoted as a criticism of the pleas.

But in another way there is economy. Dr Russell Reynolds takes it for granted that the melancholic would, because of the absence of delusion, be held responsible for his acts, whether those acts militated against himself or against others. But that is not the case. Dr. Reynolds has seperated what the law takes together. He would defeat the lawyer's arguments as Captain Bobadill defeated the King's armies. At the same time that delusion existed as a test of insanity, the knowledge of right and wrong was also acknowledged as a criterion of responsibility. Dr. Reynolds must have known that, as he quoted from Russell on Crimes, the case of Lord Ferrers, and the case of the King *v.* Offord (*British Medical Journal*, 29th June, 1872, p. 689). Now, while the test of knowledge of right and wrong existed

together with delusion, the application of one of these tests without the other could never have taken place; and in the imaginary case of the melancholic given by Dr. Reynolds (*British Medical Journal*, 22nd June, 1872, p. 661), while the man who committed suicide might not have been held insane under the test of delusion, he would inevitably have been held insane under the test which makes a knowledge of right and wrong at the time of the commission of the act necessary to fill up the idea of responsibility. Half a test can never be satisfactory by reason of its being the half.

We come now to Dr. Reynolds' second objection to the present conditions of the law which has to do with the test of right and wrong and the consequences of acts at the present time.

At the present time the law with regard to this subject may be supposed to rest upon the answers given by the judges to the questions proposed to them by the House of Lords after the trial of M'Naughten. According to these answers the knowledge of right and wrong is made the test of insanity; and without entering more fully into the doctrines involved in their answers as to the presence of delusions, and as to the existence of partial insanity, I may enter upon the consideration of the question whether that test is satisfactory or not.

The argument most frequently urged against it is that it cannot be a test of insanity, because a great many insane persons know right from wrong. Thus, those persons who labour under *melancholia* are often free from all delusion, and very often have the sense of right and wrong in a morbidly acute condition. Superintendents and directors of asylums for the insane manage to maintain discipline and order in their institutions by means of a system of rewards and punishments, and that fact proves that those persons who are upon all hands admitted to be insane, have a knowledge of what is permitted and of what is forbidden—a knowledge of right and wrong. This argument is thought by many persons to be a satisfactory proof of the absurdity of the present legal test. What can be more absurd than to set about distinguishing between two classes of men by a knowledge which is common to both ?

One preliminary question requires to be answered before we arrive at any satisfactory conclusion as to this matter, and that is,—Is there such a disease as monomania ? Is there such a thing as a mental disease, which makes a man mad at one time, although he is sane at another ; which makes him mad in relation to certain circumstances, while he is sane in other relations ? Can a man be sane with reference to one subject, and insane with re-

ference to another? The answer to these questions has been over and over again given in the affirmative by medical men, and even those who know nothing about medicine are in a position to answer it. Men have delusions about particular things or persons, or events, but upon every other subject they are rational and sane. The existence of such words as kleptomania, pyromania, homicidal mania, in the nomenclature of insanity, shows that the separateness of diseases in relation to these manifestations in act has long been recognised. It being decided, then, that a man may be sane with reference to one subject, and insane with regard to another, or, as Baron Alderson put it, "may be *non compos mentis quoad hoc*, and yet not *non compos mentis* altogether;" and it being certain that a man is never wholly and, with regard to any subject, utterly and always insane, is it not evident that the argument that the insane know right from wrong proves nothing? Should we not expect to find a man knowing right from wrong in relation to every subject upon which he was sane, and yet unable to appreciate the distinction in relation to his conduct which resulted from his insane belief? Can that be said to be any reason why right and wrong should not be the test of insanity? Does not the existence of the moral sense in all lunatics; does not the fact that order and discipline in hos-

pitals for the insane are preserved by means of rewards and punishments, prove that lunatics are, in relation to many of their acts, sane? If a monomaniac speaks truth, are we to deny him virtue? If he lies, is it not vice? Can a man who is partially insane not at the same time be vicious? Then why plead the possession of a knowledge of right and wrong by all lunatics on subjects apart from their delusions as an argument against its use as a test on subjects connected with their delusions? It tells the other way if we can prove that an insane man lacks the power of distinguishing good from evil in relation to his erroneous and diseased impression.

In that case it will be proved to be a most accurate means of distinguishing the sane acts of a man from his insane acts, which is much more important than distinguishing the insane man from the sane.

Suppose an individual to labour under a delusion that God speaks to him, and commands him to give light to the world, and that the voice even indicates in what way it is to be done—say, by burning down the house. Although that man may know right from wrong, may know that it is wrong to lie, or steal, or swear, yet in relation to that one act he cannot distinguish right from wrong at the time he does the deed. The supposed voice of God has made the distinction between these im-

possible, and therefore he should not be punished for the arson.

In interpreting the law as to this point, medical men have been influenced too much by their feelings as to the unsatisfactory nature of the rule to endeavour accurately to understand what it means. The best argument which has been produced against it is to the following effect, and it is urged by some physicians who are clear of glance and intelligent of appreciation. The speculative is very different from the active, they say. Many men can *reason* well, but *do* ill. Men live two lives,—one in their heads, and the other in the world; and a great gulf often yawns between these which it is impossible to bridge over. There is a wide difference between a speculative knowledge of right and wrong and the power which enables men to put speculative beliefs into action. This gulf may be left unbridged voluntarily or involuntarily. Hypocrisy, of course, delights in the most sublime speculations, for, never intending to go beyond speculation, it costs nothing to have it magnificent. But the madman may be incapable of going beyond speculation. He may know right from wrong, and yet have none of the capacity to refrain from doing the crime, although he may be fully convinced of the criminality of the act. There is a great deal in this suggestion which is worthy of

consideration. Man is, as it were, two: he thinks and he acts. It is with the latter that law has to do, and it may seem wrong to choose a test of acts from thought which is partially dissociated from conduct. True, his thoughts do influence his acts, and his acts re-act upon his thoughts; still, many men know the good and choose the evil; and if that choice is dictated either by bodily fear or by what has been called the *duress* of disease, he ought certainly to be held irresponsible for the crime committed. To fill up the notion of a crime, you require not only the knowledge of good and evil, but the power to choose the one and refrain from the other. Responsibility implies free will. If there is no real volition, there is no real criminality. Looked at in that aspect the present test of insanity seems defective. It is not in conformity with the facts which are capable of observation by the mass of mankind, for it is certain that unless the legal test, at the same time that it supplies a means of discovering the health or disease of the cognitive faculties, supplies a means of discovering whether the individual whose insanity is in question has the power to refrain from the wrong of which he is conscious, it would be open to numerous objections, and there would be the most obvious and pressing necessity for a revision and alteration of the law in this respect. An engineer might as well

judge of the horse-power of a locomotive from examining the cylinder and the wheels, without looking at the boiler, as a jurist gauge the capacity simply by an acquaintance with the reasoning faculties. The engine will not run without steam; potential thought will not become actual thought without volition.

Now, although it does seem that the present test is unsatisfactory, I am inclined to believe that the seeming unsatisfactoriness is due rather to a misapprehension of the true meaning of the test, than to any inherent defect in the test itself. Those who censure it do not seem to have taken the trouble to ascertain what the test really is. It is sometimes an advantage in an argument to mistake your adversaries' meaning, and refute your own misconstruction; and I believe that is what most medical men, and not a few lawyers, have done with reference to the test of insanity. The words of the judges' answer are these: "That before a plea of insanity should be allowed, undoubted evidence ought to be adduced that the accused was of diseased mind, and that *at the time* he committed the act he was not conscious of right and wrong." I think that any one who reads these words will be convinced that it is not the knowledge of right and wrong which one may speculatively entertain in calm moments which is meant

to be the test of insanity, as so many persons seem to imagine, but that it is the active idea of right and wrong which a man has when thought is passing over into action that is relied upon as the distinguishing mark of sanity. These words do not mean that a man's responsibility is to be judged of by his thorough understanding of the Decalogue, or by his calm doubts as to the existence of a conscience. They mean that we are to judge by means of the principle of action; and I am so far from thinking that it is the intention of the law to make a speculative belief the test of insanity, that I regard these words as indicating an intention to make the capacity of doing or refraining, the power of choice between good and evil, the real test, and that it shows that such is its intention by the words, "at the time he committed the act." The question to be left to the jury is not —Does he know right from wrong now? Does he possess a conscience? but—Did he *at the time* he committed the act know he was doing wrong? At such a time speculative beliefs go for nothing. A man's closet-code is not that which he takes into the market-place, into the strife. We do not judge of a man's actions by what he thinks at home, but by what he does abroad. Are right and wrong present to his mind at the time he acts, or are they absent? If they are absent, his actions cannot be

influenced by them; he has no choice, and that absence is due to disease. If that deprivation of moral scales is due to mental aberration, he is to be regarded as irresponsible. This knowledge of right and wrong, then, is the capacity which a man has at the particular moment of the deed of being influenced by motives, the power he has of refraining from the act in question. I believe that this construction is not only the obvious one, but that it will be found to be the meaning which has been almost invariably attached to these words by all the judges who have had to leave this question to the jury; and although cases may be pointed to in which injustice has been done by the verdict of the jury, I am convinced that these casualties are due only to the unseemly conflict which has existed between the medical testimony, and not to any difficulty in the rule of law. But it may not be inexpedient to explain my meaning more fully, and that may be done by means of an illustration. Suppose a man to be under the influence of bodily fear, and that a neighbour, with every appearance of malevolent intention, threatens to take his life, and holds a loaded pistol to his head, that man is, according to the law, justified in killing the neighbour who would have taken his life. It is self-defence. Now, at the moment, did the sane man, whose life was threatened, know right from wrong?

The very proverb, "necessity knows no law," indicates that extreme circumstances do away with all moral distinctions. All the man thought of was how to save his own life, and he did it. An instant afterwards the knowledge of right and wrong returns, and he stands there sane, and responsible for any act he may commit. Now, the case is almost precisely the same in the case of an insane man. Although he may be perfectly cognizant of right and wrong, still the delusion that God commands him to set fire to the house confounds and sets at naught all moral distinctions at the time. So a delusion that a man is going to take one's life may lead to a direr crime, from which, as in the case of *duress* above alluded to, the want of the knowledge of right and wrong at the time of the commission of the crime would be held to exempt the individual from the consequences of his act.

Now, this may seem to some to bring the law back simply to a proof of the existence of insanity as a ground for exemption from punishment, for it may be argued that thus explained no criminal has a knowledge of right and wrong at the time the act was committed; but that is not the case. Every ordinary criminal is, at the moment he commits the crime, fully aware that he is doing wrong; but he calculates the chances; he thinks

of the probability of his escaping detection; of the satisfaction of his desire for revenge or the like, and he is influenced by ordinary motives to the commission of the crime, and must be, in case of discovery, dealt with in the ordinary way. The test of insanity thus explained seems to me to draw as accurate a line between sanity and insanity as is practicable, and viewed in this aspect, it seems to me to be open to none of the objections which are urged against it. At the same time, I am of opinion that any test which would make itself thoroughly comprehensible to the public should be more explicit than the test alluded to at present is. I think that with very few exceptions, the members of the medical profession have mistaken the meaning of the plain words in which the test is expressed; and the legal profession, if it has understood them, which I am inclined to doubt, has not taken the trouble to explicate their meaning. I am, therefore, convinced that the legal test, while it may remain the same in substance should be different in form. It should be re-expressed, and that with the view of bringing out the fact that the *power of choice* is the real test of sanity, and that to make any choice efficient there must be a knowledge of right and wrong, of the permitted or the forbidden.

I have, then, in this paper considered—First, the necessity of a test of insanity; the satisfactory

nature of the present test. The first question was answered in the affirmative, on the ground of expediency; and as there has been no other test proposed by those who oppose the present rule of law which would have enabled me to compare the present law with the proposed amendment, I had to examine the merits of the present test in relation to the objects it is meant to attain. As it does to my judgment seem capable of obtaining these ends; and as in times past it has for the most part worked as well as the conflicting evidence which is produced in courts of law, in such cases, would allow it, I cannot see any other possible answer to the second of the questions I proposed in an earlier part of this paper, than an answer in the affirmative. The way in which the Home Secretary reverses sentences, the irretrievability of punishment by death, however interesting in themselves, have nothing to do with the question under discussion, although they have been so often imported into it that people begin to think there must be some reason for so invariable a sequence. And reason there is, the reason which induces people to win a point at any hazard, and the somewhat stupid zeal for a reform where none is absolutely necessary.

In an earlier part of this essay while I was considering the question as to the satisfactoriness of

the test of insanity to be found in the answers given by the judges to the questions proposed to them by the House of Lords I had occasion to speak of the existence of monomania, but I did not go by any means fully into the subject. Dr. Reynolds in the essay to which I have already had occasion to refer has considered the law in its present bearings upon partial insanity, and as one or two of his conclusions seem to me erroneous, it will not be thought strange that I should consider these in this place. Dr. Reynolds quotes from Chief Justice Cockburn's judgment in the case of Banks *v.* Goodfellow, but from the peculiarity of the quotation, "If the testator at the time of making his will was of capacity to make the will, as defined by the Chief Justice, the existence," &c. (where it will be seen that Sir Alexander Cockburn is made to speak of himself in the third person, as the Chief Justice), I am inclined to suspect that Dr. Reynolds has only quoted from the Chief Justice's judgment at second hand. Had he read the whole of that admirable judgment, he might have been more diffident in speaking for the whole medical profession, when he says that it must join issue with the legal profession on the three points, 1. That a man is said to have a delusion upon one point and to be sane upon all others. 2. That he is held to be responsible for any criminal act,

responsible for such acts which have no direct relation to his delusion," for he would have found that the Chief Justice quotes from Hoffbauer, Legrand de Saulle, and others, in support of the theory that the existence of delusions is not a sufficient reason for depriving a man of testamentary capacity. Although Dr. Reynolds did not gather that information from the judgment in Banks *v.* Goodfellow, nor the fact that a similar doctrine has found favour in the eyes of American lawyers,* he has arrived at certain conclusions which he states as follows :—

"1. That partial insanity is recognised by law. 2. That the responsibility as well as the capacity of the partially insane varies. 3. That the presence and degree of responsibility is subject to two different kinds of tests ; (*a*) the quality of the acts performed—viz., the civil or criminal character of the act in dispute, and (*b*), the discoverable connection between the alleged proof of insanity and the particular act in question ; and 4. That in the one class of cases—the civil—the relation between delusion and the act is allowed to exert some influence where as in the criminal it is ignored." That partial insanity is recognised by law is a fact. A man is not always mad. There are what physi-

* Cases have been decided in America even since Banks *v.* Goodfellow came before the Court of Queen's Bench which confirm the doctrine.

cians call lucid intervals, and there are also what have been called lucid intervals with regard to all subjects except one. True, many people assert that the mind is a unity, and that, consequently, a disease of a part is a disease of the whole. But a more accurate statement of the truth would be not that mind is a unity, but that life is the unity, and the disease of any part of the body must necessarily cause unhealthiness in the whole. Over and over again we hear that insanity is only a bodily disease, and if that is so, the thorough logic of the case would compel similar treatment of those who laboured under any bodily disease, to that which is bestowed upon those who suffer from what is, out of deference to ancient usage founded upon bad psychology, called mental aberration. But unity or no unity, common sense tells us that men in the direction of certain faculties are to be trusted, while in the direction of others they are untrustworthy. Habit has a way of making men lopsided. A workman becomes skilful with his hands while he obtains no greater control over his arms or legs. And what is true of body is equally true of mind. Minds are prejudiced with regard to some subjects by the circumstances of their birth, their education, or their lives; while in relation to other mental reaches they are clear and reasoning. If that disease of health—a prejudice—can exist with

relation to one subject, event, or person in a mind which reasons correctly concerning other subjects events, or persons, Why should not that disease of disease, a delusion, exist with relation to certain individuals or things while the mind is in a healthy attitude in relation to other parts of the Universe? But surely, experience goes far to prove the same thing. Monomania has been admitted as a disease by most psychologists; and the insane in asylums are frequently treated as bad, as well as mad, which is a practical admission of a sound and an unsound mind in the same individual. Until medical men are thoroughly agreed among themselves that no such thing as monomania can exist the law does well in recognising partial insanity.

2. "That the responsibility as well as capacity of the partially insane persons varies." This also seems a correct statement of the doctrine of the law. But its mere statement does not suggest any criticism. That responsibility varies is not only true with regard to the partially insane, but with regard to those who are, according to ordinary parlance, sane. Men's wills are not so strong at one part of the day as at another. A man may have more courage after dinner than before, but that is no reason why law should have a graduated scale of punishment for men of whole mind, arranged according to the vertical height of the sun and the dinner hour.

There is sufficient uniformity in the capacity of monomaniacs with relation to subjects unconnected with their delusion upon which to found a perfectly satisfactory rule of law.

3. The third deduction that Dr. Reynolds makes from the Chief Justices' judgment taken in conjunction with a dictum of Lord Hale is, "that the presence or degree of responsibility is subject to two different kinds of tests ; (*a*) the quality of the act performed—viz., the civil or criminal character of the act in dispute ; and (*b*), the discoverable connection between the alleged proof of insanity and the particular act in question." I am not sure that I understand this, but if I do, Dr. Reynolds would seem to imply that the law has two tests of insanity : 1. The knowledge of right and wrong at the time the act—the character of which is in question—was committed ; and 2. The unconnectedness of that act with a delusion existing in the mind of the individual,—and if that is his meaning he has correctly stated the law upon the subject. So far as I can see he offers no criticism upon there being two alternative tests of responsibility and capacity. His arguments, if they tend to anything, tend to prove that there should be no test or a hundred, for he seems to argue that every case should be judged on its own merits.

4. The fourth conclusion is, "that in the one

class of case—the civil—the relation between delusion and the act is allowed to assert some influence; when—as in the other—the criminal—it is ignored."

This is an incorrect inference from the cases referred to, and had Dr. Reynolds chosen to become familiar with the law of the subject he would have found that the relation between a delusion and the act is allowed to exert some influence when the act is criminal, and would have discovered that, when a person who, under an insane delusion as to existing facts, commits an offence in consequence of such delusion, he is to be considered in the same situation as to responsibility as if the facts with respect to which the delusion exist were real; and, indeed, Dr. Russell Reynolds in another part of his paper states that the legal profession maintain that a man is to "be held responsible for any criminal act, responsible for civil acts which have no direct relation to his delusion." (*British Medical Journal*, 29 June, 1872. P. 691). So that in one place he denies what he asserts in the other. After thus stating, and, in one instance at least, misstating the law, Dr. Reynolds goes on to consider the satisfactoriness of these rules, and pronounces them bad. He says, "It seems to me illogical that a man should, for example, by reason of disease be prevented from excluding from the benefits of his will,

a relative who has been unkind to him and whom he may sincerely hate, and that he should yet be liable to penalties if he knocked down that obnoxious relative when he chanced to come into his presence for the purpose of cajoling or of intimidating him into this or that." This sentence is another indication that Dr. Reynolds has not been at the trouble to understand the rules he criticises. Such criticism may be convenient, but it is scarcely safe. In the first instance the illustration is not perspicuously stated, he says that "a man by reason of disease should be prevented from excluding from the benefits of his will a relative who has been unkind to him and whom he may sincerely hate." But there is no reason why the law should, as it stands, prevent such a man from exercising his power to exclude this relative from benefit under his will. The very fact that the relative had been unkind to the testator, and that he (the testator) rationally hated his relative would go far to prove that *quoad* that act the testator was of sufficient mental capacity to make a valid disposition of his property. These circumstances would go far to show that the testamentary act by which he deprived this "obnoxious relative" of all benefit under his will was uninfluenced by any delusion under which he might labour, as they afforded a rational explanation of his exclusion. Again, Dr.

Reynolds thinks it unfair that the man who is thus deprived of his power of making a will should yet if he knocked a man down upon account of his hatred of him be held responsible for that act. But, if the man had not testamentary capacity, if his delusion in respect to his relative was, that he was constantly trying to take his life, and if the relative's unkindness (mentioned by Dr. Reynolds) took the form of blows, the lunatic would be excused if he knocked him down—on the ground that he is to be held in the same relation as to responsibility as if the facts with respect to which the delusion exists were real. But again, supposing that the case stood exactly as Dr. Reynolds has stated it where is the illogicality which he asserts? Surely, what is law for the sane may well be law for the insane. It is surely known to Dr. Reynolds that, while the will of a minor is invalid, still a minor is responsible for his criminal acts, and that upon the ground of expediency. What is absolutely necessary has as good an argument for its existence as our so-called logic.

I confess I am unable to find any other argument against the recognition of partial insanity by law, or against the kind of recognition which it at present receives in Dr. Reynolds's paper. He illustrates his view of partial insanity by comparing it with aortic regurgitation. The analogy between

the two seems to be that while the individual who labours under aortic regurgitation may go on living and working without inconvenience for years, and may ultimately die of another disease ; still he may at any time die in consequence of this failure of this aortic valve to close, and the conditions of his death under these circumstances would only be partially understood ; the monomaniac on the other hand, may go on performing his functions in business, at home, and in society, and may die at a good old age without having manifested any symptoms of an extension of the disease, yet he is at the same time like the man with aortic regurgitation liable to a catastrophic change of the eccentric malady into a central disorganisation. "With regard to the one, life is uncertain at every turn, and with regard to the other reason is insecure at every moment." In the case of the monomaniac, as in the case of the individual with heart disease, while the causes of the change may sometimes be well understood and easily appreciated, at other times they are past finding out and inexplicable. Now this analogy is intended to prove something, but what ? Does Dr. Reynolds propose that the monomaniac who *may*, according to his own confession, go on doing his work and living usefully amongst his friends and neighbours all his life should, upon the strength of this peradventure, be deprived

of all liberty in case the monomania may pass into some direr form of mental alienation? Does he propose that he should be deprived of all civil capacity, and exempted from all criminal responsibility on account of this slight mental aberration, the conditions of which are so little understood by medical psychologists that they cannot give any definite prognosis? Is this a ground, as Dr. Reynolds seems to think, for a revision of the legal doctrine with regard to partial insanity, or is it not rather an argument for the more systematic and scientific study of insanity as a disease with a definite origin, causation, development, and history which would enable the alienist physician to predict with more certainty the probable course and termination of the disease. But even if the future of the man with heart disease or the monomaniac is uncertain, does that affect the question of the satisfactoriness of the present rules in relation to partial insanity? All that law can do is to make life and property secure to a certain, and that a very limited extent. When a man has undergone the punishment for crime he has to be let out of prison again, although he is not reformed, and then he may prey on society until he is again convicted on some other criminal charge. So the monomaniacs may be allowed to go at large to exercise their rights of citizens, if in the majority of them—as is

actually the case—the disease never becomes exacerbated, and that simply upon the grounds of probability and expedience. We live on probabilities and must be content to do so. We may die in a day or two, but we do not weep, we may live for years, and on these *mays* we laugh and work, and are more or less useful members of society; and so those who labour under partial insanity may be of use to their neighbours, may be efficient in their own business affairs, pleasant in their social relations. The law cannot guard against all remote casualties.

I have examined all the propositions advanced by Dr. Reynolds with as much accurateness as the space here at my disposal, and the time now at my command will allow. If I have convinced some of the untenability of these doctrines, if I have shown that the present state of the law in relation to insanity is not nearly so bad as it seems to some enthusiastic psychologists to be, if I have proved that accurate scientific tests are unnecessary and are inapplicable by any system of jurisprudence, I have done what I desired to do.